

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Housing and Environmental Standards Work Group June 16, 2014, 1:00 PM House Room C, General Assembly Building**

#### **I. Call to Order - Affordable Housing, Real Estate Law, and Mortgages Work Group**

**Senator John Watkins, Chair**, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Senator John Watkins, *Chair*; Senator George Barker; Delegate David Bulova; Delegate Daniel Marshall; Delegate Barry Knight; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Brian Buniva; Ron Clements, *Virginia Building & Code Officials Association*; Tyler Craddock, *Manufactured & Modular Housing Association*; James R. Dawson, *Virginia Fire Prevention Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; John Hastings, *Virginia Housing Development Authority*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Ralston King, *Whitehead Consulting*; Shaun Pharr, *Apartment and Office Building Association*; Ed Rhodes, *Virginia Fire Chiefs Association*; Emory Rodgers, *Department of Housing & Community Development*; Neal Rogers, *Virginia Housing Development Authority*; Michael L. Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Property Accessed Clean Energy**

- **(HB 766, Bulova: 2013)**

This bill gave authority using a service district model; to voluntarily provide service to provide financing for improvements using clean energy.

- **Delegate David Bulova:** This issue (PACE Program) was in front of the Counties, Cities and Towns Committee during the last legislative session. This program uses energy efficient building materials, and is an economic means of fostering new jobs.

- Virginia put a PACE program in place in 2009, but hasn't worked to establish programs to date.

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT  
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

MARK K. FLYNN  
LAURA D. LAFAYETTE  
T.K. SOMANATH

- **Steve Waltz:***(State Director of Mines and Minerals, Virginia Energy Efficiency Coalition)*
  - What is PACE? Gave an overview (see handout)
  - Discussed: concerns and issues for positive cash flow; priority lien status and lender consent.
  - It is typical as taxpayer in commercial properties to have lease term in buildings match up to who pays with who gets benefits
  - Need to match who pays with who gets the benefit from the program.
  - This program began with single family home lien status.
  - The tax assessment stays with property although it can be paid off when the property is sold.
  - Would it be an encumbrance on the property??
  - This would be conducted on a voluntary basis.
  - The PACE program effects water bills, including the installation of solar provided hot water.
  - Currently used for existing building stock; what about new homes?
- **Chip Dicks:**
- What about capitol obsolescence?
  - If equipment is up to twenty years old or fewer there is usually a cost savings that would lead to financing.
  - We have to fully examine the administrative structure and cost.
- **Abby Johnson, Abacus Property Solutions**
- **ESCO**
  - I am with an energy savings company.
  - This applies to both commercial and multi-family housing and is open for any bank to take part.
  - Closed- authority to sell paper to raise funds
  - Original mortgage owner is the owner of the paper on the program.
- **Mike Toalson:**
  - How do you keep positive cash flow?
  - Which other localities have used this model?

- **Answer:** The City of Fairfax, Virginia as well as Texas, Missouri, Florida, and California have all used this model.
  - In Arlington County and the City of Charlottesville (who have used this program) the cities have invested in a viable project.
  - Who is the good faith behind bond rating?
  - If the mortgage company is to be subordinated, they would want consent of every mortgage lien holder so as not to form a contractual relationship.
  - Has been used on projects for 340,000 units of affordable housing and is currently authorized by 30 states.
  - Eight states have programs now and each locality could voluntarily opt in to the program.
  - **Delegate Danny Marshall**
    - It generally takes 10 to 15 million dollars to renovate for existing units.
  - **Chip Dicks**
    - Concerning multi-family units where there is up to \$100,000 in electricity-what happens with underwriting?
    - **Answer:** When we look at a ten- year period there are a number of variables--we have to factor in the unknown variables
  - **Senator John Watkins**
    - Why use the vehicle of a service district; the legislation is better off in § 15.2 of the Code of Virginia. The underlying law in 2009 PACE legislation calls for a real estate disclosure.
    - How does the current tax structure fit in with utilities?
  - **Mike Toalson**
    - How do you anticipate changes in utilities? I would hesitate to compete with local governments.
- \* The full Virginia Housing Commission will decide whether or not a proposed bill concerning the PACE program should be crafted and endorsed for the 2015 legislative session.

### **III. Liability during Building Inspections Using Builders/Sign Company Equipment**

- **Delegate David Toscano**

- High Tech signs, located in Albemarle County, needed to use their own equipment for local officials to see if they were complying with the building code.
- In August, in Culpeper County, when a permitted sign goes up it must be inspected; and the building inspectors expect the equipment to be provided for them to use for the inspection.
- The insurance company told the signage company it could not sign a hold- harmless agreement because of sovereign immunity.
- But, the insurance company will not cover the inspector either so there is a catch 22; I am looking to the Housing Commission to provide a workable solution.
- Virginia Beach has the same question about sovereign immunity --a locality can voluntarily opt out
- The industry has used third- party inspectors for inspection of anywhere from three to 5,000 signs.

- **Mike Toalson**

- Are there accidents in the industry that have caused death?
- **Answer:** Provision allows limited waiver to counties.
- Insurance companies??? Will make deals for work in instances like with school divisions
- **Answer:** They operate but are not owned; at the job work site, the individual is required to be there by the county.
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- A Certificate of Insurance is given from the County to the contractor
- The liability is for a person; not the job site.

- **Emory Rodgers**

- We are discussing electrical signs; the inspectors need to get access and the process of getting signs inspected takes place with man lifts and bucket trucks that the builder has access to.

- **Chip Dicks**

- This relates to any job site, if the code official gets injured his remedy is through workers compensation
- Whose insurance coverage? Builders Risk Provision?
- The research needs to be more global on this issue.

\* A decision was made for the effected parties to meet with the Bureau of Insurance and local government representatives and attorneys to craft a solution for this issue. The proposed solution will then be presented to the Virginia Housing Commission and a determination made on how best to proceed.

#### **IV. Public Comment**

- **Senator Watkins** asked if there was anyone in the audience who wanted to offer public comment.

#### **V. Adjourn**

- Upon hearing none, **Senator Watkins** adjourned the meeting at 3:15 P.M.